THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.3209 of 1998

Dated 20-11-2007

Between:

Vajja Gaddemmad

…Petitioner

And

District Registrar, Srikakulam and another

…Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.3209 of 1998

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ORDER:

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The petitioner filed O.S.No.32 of 1985 in the Court of District Munsif, Pathapatnam, for specific performance of an agreement of sale, dated 24-03-1982. The consideration for the transaction was Rs.13,500/-. The suit was decreed on 01-07-1985, and after the decree became final, the petitioner filed E.P.No.15 of 1985, in the year 1993. After the E.P. had gone through several stages, the sale deed ultimately came to be executed by the Court, and registered with the Sub-Registrar, Hiramandalam, on 02-03-1993. The District Registrar, Srikakulam, the 1st respondent, issued proceedings dated 12-09-1994, requiring the petitioner to pay a sum of Rs.5,617/-**,** deficit stamp duty, and penalty of Rs.11,234/-, on or before 30-09-1994,
by challan. It was pointed out that, if the petitioner fails to pay the said amount, a decree will be obtained from the Court, and the movable and immovable properties of the petitioner would be attached.

Feeling aggrieved by this, the petitioner filed C.M.A.No.21 of 1994 before the Court of Principal Subordinate Judge, Srikakulam. The C.M.A. was dismissed on 25-07-1997. Hence, this writ petition.

Sri M. Bala Subrahmanyam, learned counsel for the petitioner, submits that though the impugned notice dated 12-09-1994 was issued under Section 41-A of the Indian Stamp Act, 1899 (for short 'the Act'), it was not preceded by any notice, which is mandatory under sub-section (1) thereof. He contends that the document was executed

by the Court, and the Registration was effected by the Sub-Registrar, and it was not even alleged that the petitioner had suppressed any facts. Learned counsel submits that the lower Appellate Court did not appreciate the matter from the proper perspective.

Learned Government Pleader for Revenue, on the other hand, submits that the appeal preferred by the petitioner was not maintainable. He contends that any person aggrieved by an order passed under Section 41-A of the Act, has to file an appeal before the Chief Controlling Revenue Authority, and not before the Civil Court. It is further pointed out that the notice dated 12-09-1994 was issued only on the basis of the instructions issued by the Registrar of the High Court, and no exception can be taken to it.

The 1st respondent initiated proceedings against the petitioner on the ground that the stamp duty paid by him on the document registered on 02-03-1993 was inadequate. The record discloses that the stamp duty on the document was calculated
on the basis of the consideration mentioned in the agreement of sale. Placing reliance upon a circular issued by the High Court to the effect that the value of the property, as on the date of registration of the document, must be taken into account; issued the said proceedings.

Section 41-A empowers the Collector, or any Audit party to examine, as to whether there is any deficit in the stamp duty on any registered document. As and when such deficiency is noticed, they must issue show cause notice. In fact, sub-section (1) provides only for issuance of such show cause notice. On a consideration of the explanation that may be submitted by the parties, an order is required to be passed under sub-section (2).

A reading of the notice dated 12-09-1994 discloses that it was not preceded by any show cause notice, and though it is named as

notice, the purport thereof is that, the amount has already been determined and the petitioner was required to deposit the same, on or before 30-09-1994. The consequences, that would flow, in the event of the petitioner not depositing the amount, were also indicated. Therefore, it is nothing short of an order passed under sub-section (2) of Section 41-A of the Act, and admittedly, it was not preceded by a show cause notice. On this short ground, the impugned notice is liable to be set aside.

It is true that an appeal is provided under sub-Section (3) to the Chief Controlling Revenue Authority, against the order passed under sub-section (2) of Section 41-A of the Act. In the instant case, the petitioner availed the remedy of Section 47-A, and it was not at all tenable. However, since the impugned notice dated 12-09-1994 is set aside on the grounds of violation of principles of natural justice and non-compliance with sub-section (1) of Section 41-A of the Act, the said ground pales into insignificance.

Accordingly the writ petition is allowed, and the impugned order dated 12-09-1994 is set aside.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.20-11-2007.

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